

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHERRI C. CHATMAN,

Plaintiff,

v.

Civil Action 2:22-cv-3277

Judge Edmund A. Sargus, Jr.

Magistrate Judge Chelsey M. Vascura

LOUIS DEJOY, *Postmaster General,*
United States Postal Service,

Defendant.

ORDER and REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Objection (ECF No. 4) to the undersigned's September 2, 2022 Report and Recommendation, which recommended that Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* be denied. (ECF No. 3.) Based on additional information regarding her financial resources provided in her Objection, the undersigned **VACATES** the September 2, 2022 Report and Recommendation (ECF No. 3) and **GRANTS** Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 1). It is **ORDERED** that Plaintiff be allowed to prosecute her action without prepayment of fees or costs and that judicial officers who render services in this action shall do so as if the costs had been prepaid.

This matter is further before the Court on Plaintiff's Motion to Appoint Counsel (ECF No. 2.) When parties proceed *in forma pauperis*, appointment of counsel is discretionary under 28 U.S.C. § 1915(e); appointment of counsel in a civil case is not a constitutional right. *See Lavado v. Keohane*, 992 F.2d 601, 605–06 (6th Cir. 1993). Rather, “[i]t is a privilege that is justified only by exceptional circumstances.” *Id.* at 606. The Court has evaluated whether such

exceptional circumstances exist and determines that the appointment of counsel is not warranted at this juncture. Accordingly, Plaintiff's Motion for Appointment of Counsel (ECF No. 2) is **DENIED**.

This matter is further before the Court for the initial screen of Plaintiff's Complaint under 28 U.S.C. § 1915(e) to identify cognizable claims and to recommend dismissal of Plaintiff's Complaint, or any portion of it, which is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Having performed the initial screen, for the reasons that follow, the undersigned **RECOMMENDS** that the Court **DISMISS** this action pursuant to § 1915(e)(2) for failure to state a claim on which relief may be granted.

Congress enacted 28 U.S.C. § 1915, the federal *in forma pauperis* statute, seeking to "lower judicial access barriers to the indigent." *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). In doing so, however, "Congress recognized that 'a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.'" *Id.* at 31 (quoting *Neitzke v. Williams*, 490 U.S. 319, 324 (1989)). To address this concern, Congress included subsection (e) as part of the statute, which provides in pertinent part:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

* * *

(B) the action or appeal--

(i) is frivolous or malicious; [or]

(ii) fails to state a claim on which relief may be granted

28 U.S.C. § 1915(e)(2)(B)(i) & (ii); *Denton*, 504 U.S. at 31. Thus, § 1915(e) requires *sua sponte* dismissal of an action upon the Court’s determination that the action is frivolous or malicious, or upon determination that the action fails to state a claim upon which relief may be granted.

To properly state a claim upon which relief may be granted, a plaintiff must satisfy the basic federal pleading requirements set forth in Federal Rule of Civil Procedure 8(a). See also *Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (applying Federal Rule of Civil Procedure 12(b)(6) standards to review under 28 U.S.C. §§ 1915A and 1915(e)(2)(B)(ii)). Under Rule 8(a)(2), a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Thus, Rule 8(a) “imposes legal and factual demands on the authors of complaints.” *16630 Southfield Ltd., P’Ship v. Flagstar Bank, F.S.B.*, 727 F.3d 502, 503 (6th Cir. 2013).

Although this pleading standard does not require “detailed factual allegations, a pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action” is insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). A complaint will not “suffice if it tenders naked assertion devoid of further factual enhancement.” *Id.* (cleaned up). Instead, in order to state a claim upon which relief may be granted, “a complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face.” *Id.* (cleaned up). Facial plausibility is established “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility of an inference depends on a host of considerations, including common sense and the strength of competing explanations for the defendant’s conduct.” *Flagstar Bank*, 727 F.3d at 504 (citations omitted). Further, the Court holds *pro se* complaints “to less stringent standards than formal pleadings drafted by lawyers.” *Garrett v. Belmont Cty. Sheriff’s Dep’t*, 374 F. App’x 612,

614 (6th Cir. 2010) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). This lenient treatment, however, has limits; “courts should not have to guess at the nature of the claim asserted.” *Frengler v. Gen. Motors*, 482 F. App’x 975, 976–77 (6th Cir. 2012) (quoting *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989)).

The entirety of Plaintiff’s allegations in the Complaint are as follows: “1. unfair treatment; 2. slander; 3. misconduct by defendant; 4. termination without cause. The above items plus additional claims would be some but not all of my claims.” (Compl. 3, ECF No. 1-1.) This brief listing of the claims Plaintiff intends to advance is no more than the “naked assertions devoid of further factual enhancement” that the Supreme Court has held insufficient to satisfy the pleading standards of Rules 8(a) and 12(b)(6). *Iqbal*, 556 U.S. at 678. Plaintiff has failed to allege any facts whatsoever supporting her claims such that the court cannot draw a reasonable inference that Defendant is liable for the misconduct alleged. *Id.* Accordingly, Plaintiff’s Complaint fails to state a claim on which relief may be granted. It is therefore **RECOMMENDED** that the Court dismiss Plaintiff’s Complaint pursuant to § 1915(e)(2).

In sum, the September 2, 2022 Report and Recommendation (ECF No. 3) is **VACATED**; Plaintiff’s Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 1) is **GRANTED**; Plaintiff’s Motion to Appoint Counsel (ECF No. 2) is **DENIED**; and it is **RECOMMENDED** that the Court **DISMISS** Plaintiff’s Complaint for failure to state a claim on which relief may be granted pursuant to § 1915(e)(2).

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting

authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

IT IS SO ORDERED.

/s/ Chelsey M. Vascura
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE